



HIMACHAL PRADESH STATE ELECTRICITY BOARD LIMITED

(A State Govt. undertaking)

Registered office
Corporate Identity Number
GST No.
Telephone Number
Website address
Email

Vidyut Bhawan, HPSEBL, Shimla-171004(H.P.)
U40109HP2009SGC031255
HPSEBL 02 AACCH4894EHZB
0177-2803600,2801675(Office), 2813563(Fax)
www.hpseb.in
md@hpseb.in & dif@hpseb.in

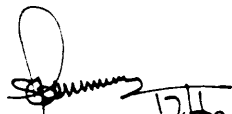


Endst. No. HPSEBL (SECTT)/R&E/Govt. Instt./Misc-19/2021 20524-20744
dated:- 17/6/21

A Copy along with a letter No. Per (AP-B) E (3)-17/2012-Part-V Government of Himachal Pradesh Department of Personnel dated 30th Jan.,2021 is forwarded for information and strict compliance to:-

1. All the Chief Engineers in HPSEB Ltd.(i/c M.D BVPLC) Jogindernagar.
2. The Chief Accounts Officer/Chief Auditor, F&A Wing HPSEB Ltd., Shimla-4.
3. All the Superintending Engineers in HPSEB Ltd.(i/c.SE-IT). ✓
4. The Land Acquisition Officer, HPSEBL Mandi/Shimla.
5. The Special Private Secretary/Sr.PS/PS to Managing Director/Directors/
Executive Director (Pers.) in Board Secretariat HPSEBL.
6. All the Dy./Under Secretaries in Board Secretariat HPSEB Ltd
7. The Secretary, Consumer Grievances Redressal Forum (CGRF) HPSEBL
Kasumpti Shimla-9.
8. All the Sr. Executive Engineers/Resident Engineers in HPSEB Ltd.
9. The Dy. Director (Pers.) IR/ Joint Director (PR.)in HPSEBL in Board Secretariat.
10. All the Section Officers in Board Secretariat HPSEB Ltd. Shimla-4.
11. Guard file.

DA:-As above.


Under Secretary (R&E.)
H.P. State Electricity Board Ltd.
Vidyut Bhawan, Shimla


19/6/21
Subst

No. Per(AP-B)E(3)-17/2012-Part-V
Government of Himachal Pradesh
Department of Personnel

From

The Chief Secretary to the
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh.
2. All Heads of Department in Himachal Pradesh
3. All Divisional Commissioners, Himachal Pradesh
4. All the Deputy Commissioners in Himachal Pradesh.
5. All the Managing Directors/Chief Executive Officers/ Secretaries/Registrar of Boards/ Corporations/Govt. Universities/Autonomous Bodies etc. in H.P

Dated Shimla-2

30th Jan. 2021

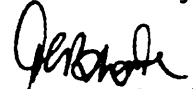
Subject:

CWP No. 5801/2020-titled as Naveen Sharma vs State of HP & Ors.

Sir/Madam,

I am directed to forward the copy of the judgment passed by Hon'ble High Court of Himachal Pradesh on 24.12.2020 in case CWP No. 5801/2020-titled as Naveen Sharma V/s State of Himachal & ors for strict compliance.

Yours faithfully,



(Om Prakash Bhandari)
Joint Secretary (Personnel) to the
Government of Himachal Pradesh
Tel. No. 0177-2626097

MD (O/T)
ED(P)
J DS(Low)
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So R&E

R&E Dary No. 23
Dated 29-4-21

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 5801 of 2020

Date of decision: 24.12.2020

Naveen Sharma

...Petitioner.

Versus

State of H.P. and another

..Respondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting ?¹ No

For the Petitioner

Mr. Surinder Parkash Sharma,
Advocate.

For the Respondents

Mr. Ashok Sharma, Advocate General,
with Mr. Vikas Rathore, Mr. Shiv Pal
Manhans, Addl. A.Gs. Mr. Bhupinder
Thakur, Ms. Seema Sharma and Mr.
Yudhbir Singh Thakur, Dy. A.Gs..

Tarlok Singh Chauhan, Judge (Oral)

The instant writ petition has been filed by the petitioner for the grant of following substantive relief:

- i) That writ of mandamus may kindly be issued, directing the respondents to transfer the petitioner from his present place of posting i.e. Government High School, Jarkot, Tehsil Chirgaon, District Shimla, H.P. (i.e.

¹ Whether reporters of Local Papers may be allowed to see the Judgment ?

hard/sub-cadre area) to one of the stations of his choice as mentioned in para-5 supra as per the provisions of Clause 16.1 of the Transfer Policy within a time bound period."

2. This writ petition came up for consideration before this Court on 15.12.2020 and on that day, the State was directed to file reply/obtain instructions within one week and the matter was ordered to be listed on 22.12.2020.

3. On 22.12.2020, learned Advocate General placed on record instructions received from the department dated 21.12.2020, which read as under:

".....In this regard, it is submitted that the petitioner is working in GHS, Jarkot (Tribal Area) w.e.f. 01.05.2017 and has completed three years service in the present place of posting. And as per transfer policy a TGT can be transferred from Sub-cadre/Tribal area to soft area without substitute only after the completion of 4 years of service and with substitute after 3 years. At present there is no substitute available with the department and the same will be provided on priority basis at the time of new recruitment."

4. However, the Court was not satisfied with these instructions and accordingly, passed the following directions:

"State to obtain instructions. However, it is made clear that in order to relieve the petitioner, he cannot be

insisted upon to provide substitute, which is beyond his reach, and moreover, such condition otherwise also violates the judgments that have been passed by this Court from time to time."

5. In compliance to the aforesaid directions, the respondents/State have placed on record fresh instructions dated 23.12.2020, which reads as under:

"In this regard, it is submitted that the petitioner is working in GHS, Jarkot (Tribal Area) w.e.f. 01.05.2017 and has completed three years service in the present place of posting. But at present no post of TGT (M) is lying vacant in any of the institution in District Hamirpur where the petitioner wants himself to be transferred. If the petitioner wants himself to be transferred to any other institution in District Hamirpur or anywhere else in other District, his case will be considered accordingly on priority basis."

6. This Court has repeatedly deprecated the practice being followed by the respondents of insisting on a substitute before transferring a person, who has otherwise completed his normal tenure in the tribal area or hard area.

7. Reference in this regard can conveniently be made to a judgment rendered by learned Division Bench of this Court in **CWP No. 2114 of 2018** titled **Sunil Kumar vs. State of H.P. and**

another, and other connected matters, decided on 23.10.2018, wherein it was observed in paras 1 to 3 as under:

"This order shall dispose of three writ petitions, since common questions of law and facts are involved in the same. The short question that arises for consideration in these cases is that whether the petitioners, who are working as TGT(Non-Medical) and TGT (Medical) and have completed their three years' tenure in remote area of District Kinnaur, are entitled to be posted at one of the places of their choice in terms of the Government Policy. However, facts are extracted from CWP No. 2114 of 2018.

2. The aforementioned question is stated to have been answered in favour of the petitioner by the authority itself vide impugned order passed by the Directorate of Elementary Education dated 25th August 2018 (Annexure 2-4). The only reason assigned for not transferring the petitioner to one of the place of his choice is that no substitute in his place has been posted so far. The impugned order recites that the petitioner's request would be considered sympathetically "at the time of promotion/appointment by posting substitute at his place in near future....."In other words, while the official respondents do not dispute the petitioner's claim that he deserves to be posted at one of the place of his choice, but the follow up action has been withheld for want of a substitute.

3. In our considered view, the substitute has to be found out by the respondents themselves and the petitioner cannot be subjected to a prolonged stay in the remote area merely because the authorities are unable to find out his alternate."

8. Similar reiteration of law can be found in the judgments rendered by the various learned Division Benches of this Court in **CWP No. 968 of 2019**, titled **Manish Kumar vs. State of H.P. and another**, decided on 07.05.2019, **CWP No. 1987 of 2019**, titled **Rohit vs. State of H.P. and others**, decided on 12.09.2019, **CWP No. 3672 of 2020**, titled **Rakesh Bhardwaj vs. State of H.P. and another**, decided on 15.09.2020 and **CWP No. 3845 of 2020** titled **Parveen Kumar vs. State of H.P. and others**, decided on 05.10.2020.

9. We are at a complete loss to understand as to why the respondents despite there being various judgments of the Court would still insist upon a substitute before transferring the person, who has completed normal tenure of service in the tribal area. After all, the substitutes are not to be found in the open market, but have to be arranged by the department itself and in case a public servant, who has been transferred, disobeys the

transfer order by not reporting at the place of posting and goes go to a court to ventilate his grievances, then such petitions are clearly not maintainable as it is the duty of the public servant to first report for work where he has been transferred and then make a representation regarding his personal problems.

10. Such tendency of not reporting at the place of posting and indulging in litigation needs to be curbed as has been observed by the Hon'ble Supreme Court in **S.C. Saxena vs. Union of India and others (2006) 9 SCC 583**, wherein it was held as under:

"6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed....."

11. Similar reiteration of law is to be found in a Division Bench judgment of this Court, authored by one of us (Justice

Tarlok Singh Chauhan, J.) in **H.K. Sarwata vs. State of H.P. and another, 2016 (4) ILR, 822.**

12. This Court on numerous occasions has made it clear that all employees will necessarily have to be posted in rural/remote areas at some stage in their careers. The administration has to be stern and strict in matters of transfers and joinings and also ensure that those posted in the tribal areas and have completed their normal tenure are posted in soft areas as per the policy framed by the Government itself.

13. Reference in this regard can conveniently be made to a Division Bench judgment of this Court in **CWP No. 1105 of 2006** titled **Sushila Sharma vs. State of H.P. and others**, decided on 27.08.2007 wherein it was observed as under:

"We are clearly of the view that normally we would not like to interfere in transfer orders passed in administrative interests. We are also of the considered view that all the employees, such as teachers, doctors, nurses etc., will necessarily have to be posted in rural/remote areas at some stage in their careers. The administration has to be stern and strict in matters of transfers. It also has to be fair and just and should treat all the employees equally. It is only because the administration itself is lax and transfer orders are passed on extraneous considerations and the administration reverses its decisions

day in and day out, that the courts and the tribunals are forced to intervene. These type of cases clearly highlight the fact that transfers are being made not on the basis of administrative exigencies but on other extraneous considerations.

In fact this Court in CWP No. 503 of 2007 titled **Gurdev Jassal v. State of H.P. & ors**, decided on 21.5.2007 had even deprecated the practice of stay orders being granted by the judicial tribunals and authorities in matters relating to stay. The observations of this Court are relevant in the present case also, which read as follows:

"We have also noticed a growing trend that while granting stay in transfer cases the judicial authorities do not take into consideration the adverse impact which such orders may have on the general public. Stay orders are granted at the instance of the applicants resulting in one or more than one officers of the same rank being posted at one place against one vacant post, like in the present case. This results in the public suffering at the place where no officer is posted and the office remaining vacant. We can take judicial notice, and in fact we have noticed in a large number of cases that due to stay orders being granted, posts of Teachers and Doctors in remote areas keep lying vacant. After obtaining the stay orders, the officers are in no hurry to get their matter heard. Why should the students in schools suffer for lack of Teachers? Why should the patients suffer in the absence of the Doctors? This court cannot shut its eyes to these important

questions. In our considered opinion, while deciding the question whether stay should be granted or not in the matters regarding transfer of the employees, the judicial authority must keep in mind the interest of the public also. We are also of the view that where the applicant-petitioner has a strong case, it is better to decide the case itself and quash the transfer orders rather than granting a stay which continues for an indefinitely long period."

However, when facts like those in the present case come to light, the Court has no option but to intervene in the matter. The authorities by acting recklessly and by changing their orders frequently unnecessarily invite interference from the Courts. It would be much better if the authorities themselves acted in a more judicious manner and if transfers are made only taking into consideration the administrative exigencies then there should be no reason to interfere.

As far as the present case is concerned, we feel that the petitioner who always remained posted in and around Kullu has no vested right to continue there that too on promotion. Though the action of the respondents is improper, she is not entitled to any relief.

We, accordingly, dismiss the petition. We, however, direct that a copy of this judgment be sent to the Chief Secretary to the Govt. of H.P., who shall ensure that a proper transfer policy is formulated to ensure that the transfers are made only on administrative grounds and not on any others grounds. In the policy to be framed, it shall be ensured that all the employees are treated fairly and equally and every

employee during his tenure of service serves in tribal/hard areas and also in remote/rural areas. When transfers are made, the administrative department shall ensure that the employees who have already served in tribal/hard areas as well as remote/rural areas are not again sent to these areas and there is a continuous process of change whereby all the employees have a chance to serve in tribal/hard areas as well as remote/rural areas. In the policy so framed, it should also be ensured that the transfer orders are not cancelled without making reference to the administrative department to put-forth its views. In the policy, measures shall be provided to ensure that employees (obviously influential) who have managed to remain posted in the urban areas/cities are posted to rural/remote area and hard/tribal areas in the transfer season when the transfers are made. The transfer policy should also ensure that people, who are posted in remote/rural areas, join their place of postings and do not manage to get their transfers cancelled on frivolous grounds as has happened in the present case. The policy be framed and filed in Court within two months from today. The Chief Secretary shall file his affidavit of compliance on or before 29th October, 2007 when the matter be listed in Court for this purpose only."

14.

Another Division Bench of this Court in **Amir Chand vs. State of Himachal Pradesh, 2013 (2) Him.L.R. (DB) 648**, took judicial notice that the Court being flooded with litigation filed by employees aggrieved by their transfer and sometimes,

even by their non-transfer when they are not shifted out of tribal areas and observed as under:

"This Court is flooded with litigation filed by employees aggrieved by their transfer and sometimes, even by their non-transfer when they are not shifted out of tribal areas. The time has come when we must lay down the law with regard to the powers of the legislators to influence transfers. Should political pressure and political influence be necessary to run the administration? Should transfers be ordered on the asking of the legislators, members of a particular ruling party, persons belonging to certain groups without even making a reference to the administrative department concerned? Is the policy of transfer always binding upon the Government and its employees or can the Government flout with impunity the policy framed by it? No doubt, the employer is the master and can decide which employee is to be posted at which particular place, but we must remember that we are governed by the Constitution of India. Does not each and every employee have a right to claim that he should be treated fairly? Why is it that favoured employees, who are either well connected or can exercise political or bureaucratic clout are never transferred out of the main cities and those employees who do not enjoy such political or bureaucratic patronage have to stay in remote/tribal areas for years on end."

15. It was thereafter that the Court passed the following directions:

"1. The State must amend its transfer policy and categorize all the stations in the State under different categories. At present, there are only two categories, i.e. tribal/ hard areas and other areas. We have increasingly found that people who are sent to the hard/ tribal areas find it very difficult to come back because whenever a person is posted there, he first manages to get orders staying his transfer by approaching the political bosses and sometimes even from the Courts. Why should the poor people of such areas suffer on this count. We are, therefore, of the view that the Government should categorize all the stations in the State in at least four or five categories, i.e. A, B, C, D and E also, if the State so requires. The most easy stations, i.e. urban areas like Shimla, Dharamshala, Mandi etc. may fall in category A and the lowest category will be of the most difficult stations in the remote corners of the State such as Pangti, Dodra Kwar, Kaza etc. At the same time, the home town or area adjoining to home town of the employee, regardless of its category, otherwise can be treated as category A or at least in a category higher than its actual category in which the employee would normally fall. For example, if an employee belongs to Ghumarwin, which is categorized in category B, then if the employee is serving in and around Ghumarwin, he will be deemed to be in Category A.

2. After the stations have been categorized, a database must be maintained of all the employees in different departments as to in which category of station(s) a particular employee has served throughout his career. An effort should be made to ensure that every employee serves in every category of stations. Supposing the State decides to have four categories, i.e. A, B, C, D, then an employee should be posted from category A to any of the other three categories, but should not be again transferred to category A station. If after category A he is transferred to category D station, then his next posting

must be in category B or C. In case such a policy is followed, there will be no scope for adjusting the favourites and all employees will be treated equally and there will be no heart burning between the employees. ◇

3. We make it clear that in certain hard cases, keeping in view the problems of a particular employee, an exception can be made but whenever such exception is made, a reasoned order must be passed why policy is not being followed.

4. Coming to the issue of political patronage. On the basis of the judgments cited hereinabove, there can be no manner of doubt that the elected representative do have a right to complain about the working of an official, but once such a complaint is made, then it must be sent to the head of the administrative department, who should verify the complaint and if the complaint is found to be true, then alone can the employee be transferred.

5. We are, however, of the view that the elected representative cannot have a right to claim that a particular employee should be posted at a particular station. This choice has to be made by the administrative head, i.e. the Executive and not by the legislators. Where an employee is to be posted must be decided by the administration. It is for the officers to show their independence by ensuring that they do not order transfers merely on the asking of an MLA or Minister. They can always send back a proposal showing why the same cannot be accepted.

6. We, therefore, direct that whenever any transfer is ordered not by the departments, but on the recommendations of a Minister or MLA, then before ordering the transfer, views of the administrative department must be ascertained. Only after ascertaining the views of the administrative department, the transfer may be ordered if approved by the administrative department.

7. No transfer should be ordered at the behest of party workers or others who have no connection either with the

legislature or the executive. These persons have no right to recommend that an employee should be posted at a particular place. In case they want to complain about the functioning of the employees then the complaint must be made to the Minister In charge and/ or the Head of the Department. Only after the complaint is verified should action be taken. We, however, reiterate that no transfer should be made at the behest of party workers."

16. It needs to be clarified that we are fully conscious that as far as transfer policy is concerned, it is not justifiable, but we may hasten to add that it is a self regulatory document published by the Government stating that what is proposed to do and how and in what manner it is going to adhere to the parameters laid down in the policy. Therefore, it is a document promoting transparency in State action.

17. In view of the aforesaid discussion, the instant petition is accordingly allowed and the respondents are directed to transfer the petitioner from his present place of posting i.e. Government High School, Jarkot, Tehsil Chirgaon, District Shimla (i.e. hard/sub cadre area) to one of the stations of his choice (i) Government High School, Khiah, District Hamirpur, H.P.; (ii) Government Senior Secondary School, Kot, District Hamirpur,

H.P.; (iii) Government Senior Secondary School, Rangar, District Hamirpur or anywhere in District Hamirpur, H.P.

18. Let a copy of this judgment be sent to the Chief Secretary to the Government of Himachal Pradesh for onward circulation to all the departments/Boards/Corporations etc. and report compliance on **07.01.2021**.

19. The petition stands disposed of in the aforesaid terms, so also the pending application(s), if any.

(Tarlok Singh Chauhan)
Judge

24th December, 2020
(GR)

(Jyotsna Rewal Dua)
Judge